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JAN 23 1995

CC MAIL ROOM

January 20, 1995

Office of the Secretary  
Federal Communications Commission  
1919 M. Street Northwest, Room 222  
Washington, D. C. 20554

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Please find enclosed, one original and nine copies of the TEXAS PCS, Inc. comments on the Public Notice dated December 23, 1994. It is our understanding that each Commissioner will receive a personal copy of these comments.

Sincerely,



MaryAnn Pas-Lucas

Member - Control Group

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Before the  
Federal Communications Commission  
Washington, D.C 20554

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JAN 23 1995

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In the Matter of  
Response to the Public Notice dated )  
December 23, 1994 requesting comment )  
on combining the auction of block F ) PP Docket No. 93-253  
with block D and E. )

To: The Commission

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COMMENTS OF TEXAS PCS, INC.

I. REASON FOR INTEREST

1. TEXAS PCS, Inc., is a small business, female/minority controlled entity that is planning to participate in the provision of PCS Service in areas in which they may secure a License(s) through the forthcoming auction process. Therefore, TEXAS PCS, Inc. has an interest in commenting on the matters regarding combining the F block licenses with the D and E block licenses as well as the related matters concerning upfront payments and installment payments.

II. SUMMARY OF VIEW

2. TEXAS PCS, Inc. does not believe that combining the auctions for block F with block C and D licenses provides an advantage for small business, designated entities who may wish to secure them. TEXAS PCS believes that combining the auctions will cause the block F licenses to become "pawns" in a game controlled by well financed firms. Thus, rather than the block F licenses providing an additional opportunity for small business and/or designated entities, the licenses could easily become a lesser portion of a larger operation. The following paragraphs provide a

more detailed discussion of the TEXAS PCS views.

### III. BACKGROUND

3. The block C and F licenses have been designated as "entrepreneur" blocks. Throughout the proceedings, the Commission, at the direction of Congress, has supported these licenses as opportunities for small businesses, with special provisions for those controlled by women and/or minorities, to participate in the provision of PCS. The Commission has taken further steps to ensure that the block C and F licenses will not end up being "fronts" or "shams" for large companies. The Commission has specified the make-up of the qualified control groups. They have established rules to prohibit "unjust" enrichment for licensees. Most recently, in the Fifth Memorandum Opinion and Order adopted November 10, 1994, the Commission further defined the control and operation issues (¶¶ 77 - 86).

### IV. RATIONALE FOR COMBINING AUCTIONS

5. In the Public Notice of December 23, 1994, the Commission suggests that block F licenses could be combined with the block D and E licenses to provide a 30 MHz system. The Commission further states that the F, D and E are "likely substitutes for each other". No longer is the block F license positioned primarily as an opportunity for qualified, designated entities to provide a form of PCS, either with 10 MHz, or as a compliment to the block C license. It is now presented as a compliment of a larger block combined with the non-entrepreneurial block D and E licenses. In reality, although the F block license is technically the same as

the D and E block licenses, under the current rules it is not a "likely substitute". For example, an entrepreneur could be pursuing the block F license as a backup to a block C license not won during the auction, or to provide a "niche" or specialized service. The block D and E licenses are not "likely substitutes" since they do not carry the discounts or installment payment plans offered to entrepreneurs. A larger firm pursuing the block D and/or E licenses cannot control the block F license, so the block F license is not a "likely substitute" as suggested.

7. The Public Notice then states: "Therefore a combined D, E and F block auction would give entrepreneurs who are interested in obtaining a 30 MHz system a second opportunity to do so, while also providing bidders with the flexibility to pursue 10 and 20 MHz aggregation strategies." This statement implies that only by combining the licenses can this strategy be pursued. There is no justification or rationale for this conclusion. Whether or not the auctions for these blocks are combined has absolutely nothing to do with an entrepreneur pursuing all three licenses. Combined auctions also have nothing to do with providing additional flexibility to pursue 10 or 20 MHz strategies. Entrepreneur qualified bidders can pursue any and all of these three licenses in separate auctions. In fact, an entrepreneur bidder who is planning on pursuing an aggregation strategy is better served by separated auctions. Separated auctions enable the entrepreneur to be sure that they have secured the key F block license before trying to pursue the block D and E licenses. Having won an F

block license will strengthen the entrepreneur whether they seek other bidders to join with them or in raising financing. This negotiating position would be much more preferable than trying to make such arrangements before or during a combined auction.

8. The Public Notice states that there are several reasons for separating the block C and F licenses into two separate auctions. They include: "auctioning simultaneously the 986 licenses in the two entrepreneurs' blocks may create excessive administrative complexity for the bidders and the Commission", "separating the C and F blocks and thereby reducing the number of licenses to be auctioned at the same time, is also likely to shorten the duration of the C block auction", "auction experience indicates that as the numbers of bidders and licenses in a simultaneous multiple round auction increase, the length and complexity of the auction also increases." These are very sound reasons for separating the block C and F auctions. They are also equally sound reasons for not combining the block F, D and E licenses into one auction. TEXAS PCS agrees that simultaneous bidding on 986 licenses is extremely difficult for both the Commission and the prospective licensees. TEXAS PCS believes that bidding on 1,479 licenses simultaneously will be far more difficult, not just for the administrative efforts of the Commission, but more so for the bidders and in particular for the entrepreneur block bidders.

9. Based upon the above, TEXAS PCS sees no advantage to entrepreneurs or procedural justification for combining the block

F auctions with the D and E auctions. In fact, TEXAS PCS believes that combining the auctions will be a distinct disadvantage for entrepreneurs, both financially and procedurally.

#### V. RULE CHANGES IF AUCTIONS COMBINED

10. The Public Notice requests commenters who favor a combined auction to address what rule changes would be necessary if they are implemented. Although TEXAS PCS is opposed to combining the auctions, they wish to offer comment on those areas that should be of great concern to all entrepreneur firms.

11. The current rules prohibit selling a block C or F license for the first three years. They also require that the "control group" for the license not only control it, but also operate the business, including among other items specified: Fifth MO&O ¶ 80 "at least one minority or female control group member must have senior managerial responsibility over day-to-day operations, e.g., as President or CEO of the licensee." TEXAS PCS believes the Commission would have to address the combining of a block F license with a block D and/or E license. They would have to address the control issue - particularly, where a block F license is combined with both a block D and E license. In this situation, the block F license would represent 33% of the business as measured by spectrum. TEXAS PCS believes that the entrepreneur would still be required to control this operation since it includes an entrepreneurial license. Otherwise it would be nothing but a "front" for the other license holders to utilize the entrepreneur block F spectrum in a larger business. The

Commission must clarify the control issues for these situations.

12. Firms who received no discounts or installment payment options on block D and E licenses would not be favorable to giving up control of their blocks to combine with an F block. No doubt they would argue that inclusion of an F block license should be an acceptable exception to the rules. To allow any such modification would foster the very "fronts" and "shams" the Commission has attempted to prohibit. Even worse, should the rules be relaxed, the majority of the block F licenses would become desirable to larger companies pursuing 30 MHz. Under this scenario, those entrepreneur qualified firms seeking the block F license to use alone or with the block C licenses would not stand a chance financially to outbid the larger groups. The plan to foster small business, and/or female/minority controlled companies would be thwarted.

13. A potential solution is to extend the installment payment, designated entity bidding discounts and lower upfront payments to block D and E licenses for those firms who qualify for block C and F. This would provide the financial incentives and justification for major firms to fund entrepreneurial qualified firms in these ventures.

14. Major firms who do not qualify will probably protest the suggestion in paragraph 13. They will no doubt favor rule modification to allow them to control the block F license. However, if the Commission will maintain its' current rules regarding entrepreneur controls on the block F license, then the

savings etc. afforded by discounts and installment payments should be preferable to major firms.

15. The Public Notice requested comments regarding modification of its' collusion rules. The rationale for justifying entering into agreements after the auctions begin is to allow block F bidders to better pursue a 30 MHz strategy. As stated earlier, there is no support for the theory that combining auctions enables pursuit of a 30 MHz strategy. TEXAS PCS believes that simply not combining the auctions makes this a moot issue. If however, the auctions are combined, TEXAS PCS believes that the Commission should allow such agreements only for a limited time period. To allow collusion during auctions might incent some firms to file for block F licenses strictly to make a deal with major firms seeking block D and E licenses. At the very least, mass confusion and posturing will occur during the auctions. This can be avoided. Specifically, post filing agreements should only be allowed after the form 175 and associated upfront payments have been made, but before the actual auction process occurs. The Commission could separate these periods by four to six weeks and allow modifications of form 175 to accommodate the arrangements. To keep upfront payments equal, the Commission should apply the \$0.015 per pop per MHz to all applicants.

## VI. CONCLUSION

16. TEXAS PCS believes that there is no advantage to combining the auctions for the block F licenses with the D and E licenses. We believe that such combination will, in fact, cause a



disadvantage for entrepreneur firms because it could hinder their current strategies, slow the entire auction process and increase the potential for "shams" and "fronts". Should the latter occur, the entire concept of opportunities for small business, minority/female controlled companies may be thwarted. Conducting the auction for block F licenses first will enable qualified entrepreneurs to pursue either separate licenses or strategies of aggregation. There is nothing that prohibits an entrepreneur after securing the block F license from pursuing the D and E licenses in separate auctions. It would also allow the F block license holder to pursue partners for a 30 MHz license.

17. Should the Commission desire to enhance opportunities for entrepreneur, designated entity firms to secure 30 MHz licenses, they can extend the installment payment and bidding discounts to them in bidding for block D and E licenses. This could be accomplished without combining the auctions since, as previously stated, combining auctions has absolutely nothing to do with pursuing a 30 MHz strategy.